IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE V.RAMKUMAR

WEDNESDAY, THE 31ST JANUARY 2007 / 11TH MAGHA 1928

Bail Appl..No. 250 of 2007()

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CRIME NO. 227/05 OF MARARIKKULAM POLICE STATION

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PETITIONER

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BINEESH, S/O. NATESAN,
KALATHIL VEEDU, WARD NO.8, CHERAI DESOM,
PALLIPPURAM PANCHAYATH, ERNAKULAM.

BY ADV. SRI.RAJIT
SRI.RANJIT BABU

RESPONDENTS:

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STATE OF KERALA, REPRESENTED BY
PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

BY ADDL. DIRECGTOR GENERALOF PROSECUTION
SRI. V.K. MOHANAN

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 25-01-2007, THE COURT ON 31-01-2007 PASSED THE FOLLOWING:

V. RAMKUMAR, J.

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Bail Application NO. 250 of 2007

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Dated, this the 31st day of January 2007

ORDER

The petitioner who is the 7th accused in Crime No. 227/05 of Mararikkulam Police Station for offences punishable under Sections 115, 120 B, 307 and 302 read with Sec. 34 I.P.C, seeks his enlargement on bail. He was arrested on 30-09-2005 and ever since then he is in judicial custody.

2. Adv. Sri. V.K. Mohanan, the learned Addl. Director General of Prosecutions opposed the application.

3. Adv. Sri. Rajit, the learned counsel appearing for the petitioner made the following submissions in support of his request for bail:-

Just because the petitioner who is one of the two managing directors of Himalaya Chit Funds was arrested only after two months of the occurrence, it does not follow that he was absconding. It is true that there were criminal cases pending against him. Most of them were lodged at the instance of the

subscribers to the kuri. In all those criminal cases he has been granted bail. W.P.C. 24576/06 alleging that witnesses were intimidated cannot be used against the petitioner. That Writ Petition was filed at a time when A6 was absconding and allegedly threatening the witnesses. A6 is now in custody and therefore there cannot be any such apprehension. At any rate, no such fear can be voiced against the petitioner. The only witness who says that A3, A4, A6 and A7 had assembled at Cherayi Beach in the morning of of 20-7-2005 is C.W. 15. Even the said witness did not hear the conversation between the said accused persons. The withdrawals from the A.T.M. account of A6 also do not fit in with the prosecution case. The extract of the calls made from the mobile phones of A2, A3 and A4 also do not incriminate the petitioner. Eventhough some of the prosecution witnesses are employees of Himalaya Chit Company, the said Company is now under the Receivership and, therefore, the petitioner is incapable of exerting any influence on the witnesses.

4. I am afraid that I cannot agree with the above submissions. The petitioner and the 6th accused (who has recently

surrendered before the committal court and who has been remanded to judicial custody) are the main beneficiaries out of the "operation assassination" of Ramesh. The fact that after the occurrence on 20-7-2005 the petitioner has been absconding and he could be apprehended by the police only on 30-9-2005 also cannot be brushed aside lightly. The case of the prosecution is that it was the petitioner and the 6th accused who had entrusted accused Nos. 3 and 4 to exterminate Ramesh who was an upcoming business rival and a force to reckon with. Ramesh who had dissociated himself from Himalaya group had started a rival chit company with with several branches to the envy of A6 and A7. Ramesh had by then become their arch enemy and A6 and A7 desperately wanted to do away with Ramesh. A criminal conspiracy was hatched in the beginning of July 2005. It was pursuant to the criminal conspiracy that the ramming operation was planned and the ploy was to make it appear that the occurrence was mere a traffic accident. A3 and A4 engaged A1 and A2 who are alleged to be hired assassins. A1 and A2 are alleged to have driven a lorry from the opposite direction and the lorry rammed into the Tata Safari Car in which Ramesh

was travelling at a place called Kanichukulangara as a result of the head-on collision Ramesh, his sister Latha and his driver Shamsuddin died on the spot. Two other persons travelling in the car sustained grievous hurt. After successfully executing the ploy the petitioner had rejoiced the victory by distributing sweets. The petitioner along with A6 were then absconding and were later discovered to have been residing in a place near Ootty leaving no clue about their whereabouts. Even if the petitioner has not been convicted in the 11 criminal cases against him, the fact remains that he is an accused in those eleven cases which include cheating cases. His position in life and his plutocratic clout also cannot be easily brushed aside as he appears to be a person who may go to any extent to buy an acquittal. Similarly the fact that one of the charge witness (CW2) had filed a Writ Petition as W.P.(C) 24576/06 alleging that the witnesses were intimidated also cannot be taken lightly by the court. Even if the Chit Company is under receivership, the influence wielded by the petitioner over his employees cannot be easily ignored. The facts of the case when tested in the light of the guidelines laid down by the Apex Court in Kalyan

Chandra Sarkar v. Rajesh Rajan @ Pappu Yadav and Another - 2004 (7) SCC 528 and Anil Kumar Tulsiyani v. State of U.P.- 2006 (2) KLT 806, will reveal that the petitioner if released on bail will definitely influence and intimidate the prosecution witnesses and meddle with the evidence for the prosecution. I am not inclined to grant bail to the petitioner.

This petition is accordingly, dismissed.

V. RAMKUMAR,
(JUDGE)

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